

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION - FELONY BRANCH

ORIGINAL

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UNITED STATES OF AMERICA, : Criminal Case Nos. 2010 CF1 21604
:
v. : Judge Thomas J. Motley
:
KWAN KEARNEY, :
Defendant. : CSD June 15, 2012

UNITED STATES' MEMORANDUM IN AID OF SENTENCING

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this memorandum in aid of sentencing. On March 22, 2012, defendant Kearney was convicted after a jury trial on every count of the indictment: First Degree Murder While Armed (M1WA), Possession of a Firearm During the Commission of a Crime of Violence (PFCOV), Unlawful Possession of a Firearm (UPF), and Carrying a Pistol Without a License (CPWL). For the reasons set forth below, the United States requests that the Court impose a substantial sentence of not less than fifty years of incarceration.

I. FACTUAL BACKGROUND OF THIS CASE

Evidence at trial revealed that on the night of Saturday, November 13th, 2010, defendant Kwan Kearney contacted his good friend, Jeremy Risper. Kearney had spent the night at a party at the home of Marcha Johnson. Risper, Kearney, Johnson and numerous others in the case all hailed from the neighborhood of First & O, NW, Washington, D.C. Johnson lived off of Minnesota Avenue, NE. Kearney attended the party with friends from First & O; Risper did not.

Risper was persona non grata with the many of the First & O persons because he had testified for the government the year before in a murder trial against Levon Williams, aka "Psycho" or "Big Psych." Risper and Kearney's brother Eric, aka Tay, had both testified and both were considered

"hot." As a result, there was a rift in the group of friends.

On the night of the party, a second rift developed when Johnson and defendant Kwan Kearney got into a fistfight outside of Johnson's home. Johnson did not like Kearney, and was angry with Kearney for taking a relative's cell phone at the party. Johnson won the fight. Kearney was upset, and demanded his gun from his friends at the party. One of those friends, cooperating witness #1, testified that he had borrowed the gun from Kearney, but refused to give it back to him because he was afraid Kearney would use it to shoot Johnson. Kearney and several of these friends, including decedent Jamal Wilson, then boarded the X2 bus to ride back to First and O. En route, Kearney started blustering at his friends. One of these friends had been given Kearney's gun for safekeeping. Somewhere en route, the friend gave Kearney the gun.

When Kearney arrived at the bus stop at North Capitol and H, he threatened his friends: "My nigga's from Sursum Corda will roll with me before ya'll." Kearney fired his gun multiple times at the friends. No one was hurt.

When the friends from the bus returned to First & O, they began preparing for what they believed was imminent retaliation from Kearney. The decedent retrieved his gun from hiding, and rode off on a bike looking for Kearney. He later returned, and reported that he had seen Kearney in Sursum Corda and fired at Kearney. Kearney and the decedent exchanged heated phone calls. At one point, Kearney told the decedent he was coming up there.

It is during this time that circumstantial evidence indicates that Kearney contacted Risper, Risper agreed to arm himself and join Kearney, and the two men traveled to the unit block of Q Street, NE, to find and kill the decedent and perhaps cooperating witness #1. Kearney was armed with a Colt .45 semi-automatic pistol that he and Risper had stolen earlier that week from a friend,

cooperating witness #3. (Cooperating witness #3 and Kearney had used the gun six days earlier in a murder / double shooting on Holbrook Street, NE.) Risper was armed with a .32 caliber semiautomatic pistol that appears not to have been loaded.

Shortly after 12:00 a.m., Kearney and Risper approached a group of persons, including the decedent, cooperating witness #1, and cooperating witness #2, in the unit block of Q Street, NE. Risper and Kearney were calling out, "Where's Mally? Where's Dre?" Both were carrying pistols.

Five young men from the group, including the decedent and cooperating witness #1, ran off as Kearney and Risper approached. They were captured on video at the New York Pizza at the corner of North Capitol and Q Streets, NE. The two were followed shortly by Kearney and Risper, who were also captured on video. The five young men crossed North Capitol Street, and ran down Bates Street, NW. Four of the men then ran down the alley to P Street, NW, and were captured on camera doing so. Kearney and Risper pursued the young men across North Capitol Street, down Bates, and through the alley – and were recorded again on video.

On the south side of the unit block of P Street, NW, decedent Wilson stopped and pointed his gun back at the alley and the playground. He had enough, and was determined not to run any further. His friends implored him to run. Kearney and Risper came down through the alley and appeared on the playground across the street. Both Kearney and Risper brandished guns. Kearney fired; Wilson fired back. Kearney fired five times; Wilson fired four times. A bullet from Kearney's gun entered Wilson's right lower back, and blew a hole in his heart. Wilson managed to run a short distance before collapsing in his friend's arms.

Kearney and Risper tried to leave back through the alley, but were thwarted by a passing police car. They ran back into the alley, hid the two guns behind the playground, and then split up.

This flight, but not the hiding of the guns, was also captured on video. Risper was stopped by police running down P Street away from the murder. Kearney was stopped when he borrowed a bike from cooperating witness #2, and then rode up to police who had stopped Risper. Later that day, police recovered the two guns that Kearney and Risper had hidden behind the playground. The Colt .45 fired by Kearney proved to be a ballistic match to the five casings fired by Kearney, and to the bullet recovered from decedent's chest.

II. SENTENCING GUIDELINES CALCULATION

Defendant's criminal history score is 5.75, which places him in column "D." Accordingly, the government calculates defendant's guidelines range as follows:

Count One: M1WA	360	720	Consecutive
Count Two: PFCOV	72	120	Discretionary
Count Three: CPWL	18	36	Discretionary
Count Five: UPF	30	54	Discretionary
Guidelines minimum (sum of minimum for bolded counts)	360		
Guidelines maximum (sum of all maximum sentences)	930		
Guidelines Range: 30 years (360 mos.) to 77.5 years (930 mos.).			

III. SENTENCING RECOMMENDATION

The defendant comes before the Court having been found guilty of murdering Jamal Wilson. The defendant is only twenty-two years old, but, as his lengthy criminal history proves, he has no

respect for human life nor any understanding of how to comport himself with the laws of a civil society.

There are a number of aspects to this case that make it particularly troubling. First, the defendant cannot blame his upbringing as the main cause of his criminal behavior because he has had a mother who has provided for him both financially and emotionally. Second, the defendant has had numerous chances to chose a better path, but he has squandered every opportunity. Indeed, despite his lengthy criminal history - which is replete with serious acts of violence - the defendant has twice failed on probation and chosen this life of crime.

Third, this case is yet another example of defendant Kearney's willingness to commit violence with little or no provocation. This entire incident began for defendant Kearney because his friends would not help him in his fight with Marcha Johnson earlier in the night. They did not come to his aid because they thought he was in the wrong. And they did not give him his gun back because they did not want him to use it to shoot Marcha Johnson. Defendant Kearney felt betrayed by his friends and that feeling of betrayal is what sparked Kearney's decision to kill Mr. Wilson. Moreover, any attempt by Kearney to try to justify the incident by pointing out that Mr. Wilson also had a gun and fired back utterly ignores that Wilson and his friends ran to P Street to avoid any violence and that the defendants armed themselves, went to First and O, and chased the group down to shoot and kill.

Finally, defendant Kearney's conduct in this case was not anomalous; indeed, he committed the instant tragedy a mere six days after shooting and killing a young man for absolutely no reason

at all.¹

For all of these reasons, and any more set forth at the sentencing hearing, a fair, just and appropriate sentence in this case requires that defendant Kearney be sentenced to no less than fifty years of incarceration.

Respectfully submitted,

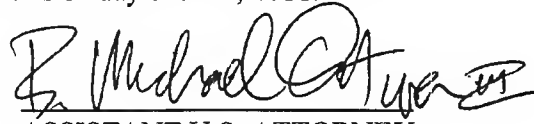
RONALD C MACHEN JR.
UNITED STATES ATTORNEY

A handwritten signature in black ink, appearing to read "D. Michael Ortwein", written over a horizontal line.

DAVID P. SAYBOLT
B. MICHAEL ORTWEIN, III
ASSISTANT U.S. ATTORNEYS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been emailed to counsel for defendant Kearney, Gene Johnson, Esq., on this 8th day of June, 2012.

A handwritten signature in black ink, appearing to read "D. Michael Ortwein", written over a horizontal line.
ASSISTANT U.S. ATTORNEY

¹ In U.S. v. Kearney, 2010 CF1 22068, Judge Richter sentenced the defendant to a period of incarceration of sixty years for the murder of Joseph Sharps and the shooting of another victim who survived the incident.